

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

3-RIVERS, INC., a Utah corporation,  
Plaintiff,

vs.

TOQUERVILLE ENTERPRISES, LLC, a  
Nevada limited liability company, et al.

Defendants.

SUMMIT-HURRICANE DEVELOPMENT  
INC. and TOQUERVILLE ENTERPRISES,  
LLC,

Cross Claimants/Third-party Plaintiff,

vs.

ANB FINANCIAL N.A. by third-party  
defendants, the FEDERAL DEPOSIT  
INSURANCE CORPORATION and SITUS  
SERVE LP aka THE SITUS COMPANIES

Cross Defendants/Third-party  
Defendants.

MEMORANDUM DECISION  
AND ORDER

Case No. 2:09 cv 742

The third-party Defendants move this court dismiss the Cross-Claim/Third Party  
Complaint Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. The defendants

have opposed this motion. In addition, Defendants and Third-party plaintiffs Toquerville Enterprises, LLC and Summit-Hurricane Development, LLC move the court for leave to amend their Cross Claim/Third-party Complaint, to Exercise Supplemental Jurisdiction, and for Referral to ADR-Mediation. After a careful review of the parties' written submissions for the above-referenced motions, the court concludes that oral argument is not necessary, *see* DUCivR 7-1(f), and enters the following Memorandum Decision.

### BACKGROUND

The plaintiffs in this action, 3-Rivers, Inc., are suing to foreclose upon real property located in Hurricane, Utah. The property, commonly known as the Collina Tinta project is composed of multiple parcels of property owned by numerous parties. ANB Financial loaned money to the project developer and in turn received a deed of trust for the property associated with the project. Subsequent to issuing this loan, ANB failed as a financial institution and the Federal Deposit Insurance Corporation (the FDIC) assumed control of the entity. The Situs Companies (Situs) is acting as the FDIC's agent in administering the assets of ANB.

Because the FDIC is a party to this action, this case was removed to the federal court in August 2009, pursuant to 28 U.S.C. §1819(b)(2)(B). Defendants Toquerville Enterprises and Summit-Hurricane Development (the cross claimants) filed a cross-claim against the FDIC for quiet title. The plaintiff also seeks declaratory action.

### DISCUSSION

This matter is before the court on a motion to dismiss; therefore, the court "assumes the truth of all well-pleaded facts in [a cross-claim] and views them in the light most favorable to [the] plaintiff." *Wennemen v. Brown*, 49 F.Supp. 2d 1283, 1286 (D. Utah 1999). Construing the

pleadings liberally and viewing all inferences in light most favorable to the nonmoving party, “the court may dismiss the complaint for failure to state a claim upon which relief can be granted only if it appear to a certainty that plaintiff can prove no set of facts in support of its claim which would entitle the plaintiff to relief.” *Id.*

The FDIC argues that the cross-claim should be dismissed because the FDIC has a security interest in the property, not a competing claim to title. The cross claimants agree that a deed of trust does not constitute an interest that would allow a right to title, but argue that a quiet title action is proper to determine rights and interests in real property.

A quiet title action is used to resolve competing claims to title. Utah Code Ann. § 78B-6-1301; *Nolan v. Hoopiaina*, 2006 UT 53, ¶ 27. In this case, the FDIC Receiver has not asserted a claim to title but instead a security interest in the subject property. This interest cannot be determined in a quiet title action. Therefore, Toquerville Enterprises, LLC, and Summit Hurricane Development, LLC’s sole claim against the FDIC as Receiver, quiet title, is not a claim upon which relief can be granted. Accordingly, the court GRANTS the FDIC as Receiver’s motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6).

Federal jurisdiction in this case is only proper because the FDIC is a party. The court declines to exercise supplemental jurisdiction over the remaining claims, as they focus on state law issues. Without jurisdiction, this case is REMANDED to the Fifth Judicial District Court in and for Washington County, State of Utah.

DATED this 30<sup>th</sup> day of September, 2010.

  
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Dee Benson  
United States District Judge